

In accordance with N.C.G.S. §150B-19.1(c), the Commission is considering the following proposed rule adoptions, revisions, or repeals. No federal certifications or fiscal notes are required for any of these proposed changes.

Members of the public may submit oral or written comments on any proposed rule(s) by contacting the rule-making coordinator as follows:

Thomas R. Miller
North Carolina Real Estate Commission
P.O. Box 17100
Raleigh, NC 27619
(919) 875-3700 (telephone)
(919) 877-4220 (fax)
legal@ncrec.gov



NOTICE OF TEXT

[Authority G.S. 150B-21.2(c)]

OAH USE ONLY

VOLUME:

ISSUE:

CHECK APPROPRIATE BOX:

- ☒ Notice with a scheduled hearing
☐ Notice without a scheduled hearing
☐ Republication of text. Complete the following cite for the volume, issue, and date of previous publication, as well as blocks 1 - 3 and 6 - 12. If a hearing is scheduled, complete block 4.
Previous publication of text was published in Volume: Issue:

1. Rule-Making Agency:

North Carolina Real Estate Commission

2. Proposed Action -- Mark the appropriate box(es) and list rule citation(s) beside proposed action:

☐ **ADOPTION:**

☒ **AMENDMENT:** 21 NCAC 58A .0107, .0114, .0402, .0403, .0405, .0504, .0505, .0616, .1902, .1903; 21 NCAC 58C .0207, .0603; and 21 NCAC 58E .0204, .0507

☐ **REPEAL:**

3. Proposed effective date: January 1, 2012

4. Is a public hearing planned? ☒ Yes ☐ No

If yes: Public Hearing date: October 12, 2011

Public Hearing time: 9:00 a.m.

Public Hearing Location: North Carolina Real Estate Commission, 1313 Navaho Drive, Raleigh, NC, 27609

5. If no public hearing is scheduled, provide instructions on how to demand a public hearing:

6. Explain Reason For Proposed Action:

To clarify the rules in light of suggestions from the public, licensees, and the Commission's staff and to bring the rules into conformity with recent legislative changes to N.C. Gen. Stat. chs. 47E and 93A, enacted in the last General Assembly session by S.L. 2011-217 and 2011-362..

7. The procedure by which a person can object to the agency on a proposed rule:

Any person who objects or who has a comment about proposed rule changes may submit written comments to rule-making coordinator, Thomas R. Miller, at the address given below.

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

8. The person to whom written comments may be submitted on the proposed rule:

Name: Thomas R. Miller

Address: North Carolina Real Estate Commission
P.O. Box 17100
Raleigh, NC 27619

Phone (optional): 919-875-3700

Fax (optional): 919-877-4220

E-Mail (optional): legal@ncrec.gov

9. Comment Period Ends: October 12, 2011

10. Fiscal impact (mark all that apply).

If this form contains rules that have different fiscal impacts, list the rule citations beside the appropriate impact.

☐ **Certified by OSBM**

☐ **State funds affected**

☐ **Local funds affected**

☐ **Substantial economic impact (\geq \$3,000,000)**

☐ **Fiscal Note posted at <http://www.osbm.state.nc.us/>_____**

☒ **No fiscal note required pursuant to G.S. 150B-21.4**

11. Rule-making Coordinator:

Thomas R. Miller

Address:

North Carolina Real Estate Commission
PO Box 17100, Raleigh, NC, 27619

Phone: 919-875-3700

E-Mail: legal@ncrec.gov

Agency contact, if any:

Karissa B. sluss

Phone: 919-875-3700

E-mail: karissa@ncrec.gov

12. Signature of Agency Head* or Rule-making Coordinator:

***If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name: Thomas R. Miller

Title: Rule-making Coordinator



NOTICE OF TEXT FOR PROPOSED RULE CHANGES
EFFECTIVE JANUARY 1, 2012

SUMMARY OF PROPOSED AMENDMENTS

- 1) Amend 21 NCAC 58A .0107(a) to clarify that a broker may transmit a check for a due-diligence payment under the new offer to purchase and contract form from the buyer to the seller without having to deposit it into and disburse it from a trust account and to clarify that properly documented electronic deposits into and disbursements from a broker's trust account are permissible.
- 2) Amend 21 NCAC 58A .0114(a) to clarify the instructions portion of the residential property disclosure form so that users of the form will better understand that the disclosure requirements apply to sellers of condominiums, townhouses, and similar residences in the same way it applies to sellers of single-family detached residences. Also, to include the required disclosures in the residential property disclosure form currently in use by adding a new paragraph (c) to set out the required disclosures in a new form intended for use when the subject property is governed by an owners' association pursuant to a regime of covenants, conditions, or restrictions.
- 3) Amend 21 NCAC 58A .0402, .0403 and .0405 relating to license examination requirements and procedures to require a two-part examination consisting of a national section and a North Carolina section rather than the current one-part examination and to prescribe modified procedures for scheduling and taking the two-part examination.
- 4) Amend 21 NCAC 58 A.0504, and .0505 to eliminate references to license cancellation where they appear and to provide instead that when a provisional broker fails to complete required post-licensing education in a timely fashion, the broker's license will be placed on inactive status
- 5) Amend 21 NCAC 58A .0616 to correct a simple error in statutory reference.
- 6) Amend 21 NCAC 58A .1902 to provide that in order for a provisional broker whose license is on inactive status for not completing all post-licensing education within three years of initial licensure to activate his or her license, he or she would have to show completion of all three post-licensing courses within three years (as well as satisfy the continuing education requirements of licenses activation). This requirement would also apply to provisional brokers whose licenses were canceled prior to the statutory amendment and restore them to inactive status pursuant to House Bill 386.
- 7) Amend 21 NCAC 58A .1903 will be amended to clarify the Commission's authority to extend the time for completing post-licensing courses by reason of hardship

- 8) Amend 21 NCAC 58C .0207 to prohibit a private real estate school from using a van, tractor-trailer, or other motor vehicle as a classroom facility and to require that classrooms have the capability for instructors to make electronic visual presentations.
- 9) Amend 21 NCAC 58C .0603(c) to provide that an individual applying for approval as a prelicensing and postlicensing instructor may be granted a six-month grace period to attend the Commission's New Instructor Seminar and satisfactorily demonstrate his or her teaching skills on a video recording only once.
- 10) Amend 21 NCAC 58E .0204 to prescribe requirements for reinstatement of an expired instructor approval to teach the Real Estate Update continuing education course.
- 11) Amend 21 NCAC 58E .0507 to prohibit a continuing education sponsor from using a motor vehicle as a classroom facility, to require that continuing education classrooms have the capability for instructors to make electronic visual presentations, and to require that classroom facilities comply with applicable laws and regulations regarding health, safety, and welfare, including the Americans with Disabilities Act and other laws relating to accessibility for places of public accommodation.

21 NCAC 58A .0107 is proposed to be amended as follows:

21 NCAC 58A .0107 HANDLING AND ACCOUNTING OF FUNDS

- a) Except as provided herein, all monies received by a licensee acting in his or her fiduciary capacity shall be deposited in a trust or escrow account maintained by a broker not later than three banking days following receipt of such monies except that earnest money deposits paid by means other than currency which are received on offers to purchase real estate and tenant security deposits paid by means other than currency which are received in connection with real estate leases shall be deposited in a trust or escrow account not later than three banking days following acceptance of such offer to purchase or lease; the date of acceptance of such offer to purchase or lease shall be set forth in the purchase or lease agreement. All monies received by a provisional broker shall be delivered immediately to the broker by whom he or she is employed, except that all monies received by nonresident commercial licensees shall be delivered as required by Rule .1808 of this Subchapter. A licensee may accept custody of a check or other negotiable instrument made payable to the seller of real property as payment for option money or option fee in connection with an option contract or for a non-refundable fee to the seller for a buyer's right to inspect property or determine its suitability for the buyer's needs prior to the closing of a sales transaction, but only for the purpose of delivering the instrument to the ~~optionor-seller, seller.~~ While the instrument is in the custody of the licensee, the licensee shall, according to the instructions of the ~~buyer-optionee, buyer,~~ either deliver it to the ~~seller-optionor seller~~ or return it to the ~~buyer-optionee, buyer.~~ The licensee shall safeguard the instrument and shall be responsible to the parties on the instrument for its prompt and safe delivery. In no event shall a licensee retain such an instrument for more than three business days after the acceptance of the option or other sales contract.
- (b) In the event monies received by a licensee while acting in a fiduciary capacity are deposited in a trust or escrow account which bears interest, the licensee having custody over such monies shall first secure from all parties having an interest in the monies written authorization for the deposit of the monies in an interest-bearing account. Such authorization shall specify how and to whom the interest will be disbursed, and, if contained in an offer, contract, lease, or other transaction instrument, such authorization shall be set forth in a conspicuous manner which shall distinguish it from other provisions of the instrument.
- (c) Closing statements shall be furnished to the buyer and the seller in the transaction not more than five days after closing.
- (d) Trust or escrow accounts shall be so designated by the bank or savings and loan association in which the account is located, and all deposit tickets and checks drawn on said account as well as the monthly bank statement for the account shall bear the words "Trust Account" or "Escrow Account."
- e) A licensee shall maintain and retain records sufficient to identify the ownership of all funds belonging to others. Such records shall be sufficient to show proper deposit of such funds in a trust or escrow account and to verify the accuracy and proper use of the trust or escrow account. The required records shall include:
- (1) bank statements;
 - (2) ~~canceled checks~~ canceled checks and other evidence or memoranda of payments from the account, whether by transfer between accounts, wire payments, or payments by electronic means, which

shall be referenced to the corresponding journal entry or check stub entries and to the corresponding sales transaction ledger sheets or for rental transactions, the corresponding property or owner ledger sheets. Checks and other evidence or memoranda of payments from the account shall conspicuously identify the payee and shall bear a notation identifying the purpose of the disbursement. When a ~~check~~ payment is used to disburse funds for more than one sales transaction, owner, or property, the check or other evidence or memoranda of payment shall bear a notation identifying each sales transaction, owner, or property for which disbursement is made, including the amount disbursed for each, and the corresponding sales transaction, property, or owner ledger entries. When necessary, the check notation may refer to the required information recorded on a supplemental disbursement worksheet which shall be cross-referenced to the corresponding ~~check~~ check or payment. In lieu of retaining canceled checks, a licensee may retain digitally imaged copies of the canceled checks or substitute checks provided that such images are legible reproductions of the front and back of such instruments with no smaller images than 1.1875 x 3.0 inches and provided that the licensee's bank retains for a period of at least six years the original checks, "substitute checks" as described in 12 C.F.R. 229.51 or the capacity to provide substitute checks as described in 12 C.F. R. 229.51, and makes the original or substitute checks available to the licensee and the Commission upon request;

- (3) ~~deposit tickets~~ tickets or other evidence or memoranda of deposits or payments into the account, whether by transfer between accounts, wire payments, or payments by electronic means. For a sales transaction, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the purpose and remitter of the funds deposited, the property, the parties involved, and a reference to the corresponding sales transaction ledger entry. For a rental transaction, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the purpose and remitter of the funds deposited, the tenant, and the corresponding property or owner ledger entry. For deposits of funds belonging to or collected on behalf of a property owner association, the deposit ticket or other evidence or memoranda of deposits or payments into the account shall identify the property or property interest for which the payment is made, the property or interest owner, the remitter, and the purpose of the payment. When a single deposit ticket or payment is used to deposit funds collected for more than one sales transaction, property owner, or property, the required information shall be recorded on the ticket or other evidence or memoranda of deposits or payments into the account for each sales transaction, owner, or property, or ~~the ticket~~ it may refer to the same information recorded on a supplemental deposit worksheet which shall be cross-referenced to the corresponding deposit ticket;

- (4) a payment record sheet for each property or interest for which funds are collected and deposited into a property owner association trust account as required by Paragraph (i) of this Rule. Payment record sheets shall identify the amount, date, remitter, and purpose of payments received, the

amount and nature of the obligation for which payments are made, and the amount of any balance due or delinquency;

- (5) a separate ledger sheet for each sales transaction and for each property or owner of property managed by the licensee identifying the property, the parties to the transaction, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for the particular sales transaction or, in a rental transaction, the particular property or owner of property. Monies held as tenant security deposits in connection with rental transactions may be accounted for on a separate tenant security deposit ledger for each property or owner of property managed by the licensee. For each security deposit the tenant security deposit ledger shall identify the remitter, the date the deposit was paid, the amount, the tenant, landlord, and subject property. For each disbursement of tenant security deposit monies, the ledger shall identify the check number, amount, payee, date, and purpose of the disbursement. The ledger shall also show a running balance. When tenant security deposit monies are accounted for on a separate ledger as provided herein, deposit tickets, canceled checks and supplemental worksheets shall reference the corresponding tenant security deposit ledger entries when appropriate;

- (6) a journal or check stubs identifying in chronological sequence each bank deposit and disbursement of monies to and from the trust or escrow account, including the amount and date of each deposit and a reference to the corresponding deposit ticket and any supplemental deposit worksheet, and the amount, date, check number, and purpose of disbursements and to whom paid. The journal or check stubs shall also show a running balance for all funds in the account;

- (7) copies of contracts, leases and management agreements;

- (8) closing statements and property management statements;

- (9) covenants, bylaws, minutes, management agreements and periodic statements relating to the management of a property owner association; and

- (10) invoices, bills, and contracts paid from the trust account, and any documents not otherwise described herein necessary and sufficient to verify and explain record entries.

Records of all receipts and disbursements of trust or escrow monies shall be maintained in such a manner as to create an audit trail from deposit tickets and canceled checks to check stubs or journals and to the ledger sheets.

Ledger sheets and journals or check stubs must be reconciled to the trust or escrow account bank statements on a monthly basis. To be sufficient, records of trust or escrow monies must include a worksheet for each such monthly reconciliation showing the ledger sheets, journals or check stubs, and bank statements to be in agreement and balance.

(f) All trust or escrow account records shall be made available for inspection by the Commission or its authorized representatives in accordance with Rule 21 NCAC 58A .0108.

(g) In the event of a dispute between the seller and buyer or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by a licensee, the licensee shall retain said deposit in a

1 trust or escrow account until the licensee has obtained a written release from the parties consenting to its disposition
2 or until disbursement is ordered by a court of competent jurisdiction. Alternatively, the licensee may deposit the
3 disputed monies with the appropriate clerk of court in accordance with the provisions of G.S. 93A-12. If it appears
4 to a licensee holding a disputed deposit that a party has abandoned his or her claim, the licensee may disburse the
5 money to the other claiming parties according to their written agreement provided that the licensee first makes a
6 reasonable effort to notify the party who has apparently abandoned his or her claim and provides that party with an
7 opportunity to renew his or her claim to the disputed funds. Tenant security deposit monies shall be disposed of in
8 accordance with the requirements of G.S. 42-50 through 56 and G.S. 42A-18.

9 (h) A licensee may transfer earnest money deposits in his or her possession collected in connection with a sales
10 transaction from his or her trust account to the closing attorney or other settlement agent not more than ten days
11 prior to the anticipated settlement date. A licensee shall not disburse prior to settlement any earnest money in his or
12 her possession for any other purpose without the written consent of the parties.

13 (i) The funds of a property owner association, when collected, maintained, disbursed or otherwise controlled by a
14 licensee, are trust monies and shall be treated as such in the manner required by this Rule. Such funds must be
15 deposited into and maintained in a trust or escrow account dedicated exclusively for funds belonging to a single
16 property owners association and may not be commingled with funds belonging to other property owner associations
17 or other persons or parties. A licensee who undertakes to act as manager of a property owner association or as the
18 custodian of funds belonging to a property owner association shall provide the association with periodic statements
19 which report the balance of association funds in the licensee's possession or control and which account for the funds
20 the licensee has received and disbursed on behalf of the association. Such statements must be made in accordance
21 with the licensee's agreement with the association, but in no event shall the statements be made less frequently than
22 every 90 days.

23 (j) Every licensee shall safeguard the money or property of others coming into his or her possession in a manner
24 consistent with the requirements of the Real Estate License Law and the rules adopted by the Commission. A
25 licensee shall not convert the money or property of others to his or her own use, apply such money or property to a
26 purpose other than that for which it was paid or entrusted to him or her, or permit or assist any other person in the
27 conversion or misapplication of such money or property.

28 (k) In addition to the records required by Paragraph (e) of this Rule, a licensee acting as agent for the landlord of a
29 residential property used for vacation rentals shall create and maintain a subsidiary ledger sheet for each property or
30 owner of such properties onto which all funds collected and disbursed are identified in categories by purpose. On a
31 monthly basis, the licensee shall reconcile the subsidiary ledger sheets to the corresponding property or property
32 owner ledger sheet.

33 (l) In lieu of maintaining a subsidiary ledger sheet, the licensee may maintain an accounts payable ledger sheet for
34 each owner or property and each vendor to whom trust monies are due for monies collected on behalf of the owner
35 or property identifying the date of receipt of the trust monies, from whom the monies were received, rental dates,
36 and the corresponding property or owner ledger sheet entry including the amount to be disbursed for each and the
37 purpose of the disbursement. The licensee may also maintain an accounts payable ledger sheet in the format

described in Paragraph (k) of this Rule for vacation rental tenant security deposit monies and vacation rental advance payments.

History Note: Authority G.S. 93A-3(c); 93A-9;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Amended Eff. January 1, 2012; April 1, 2006; July 1, 2005; July 1, 2004; July 1, 2003; September 1, 2002; August 1, 2000; August 1, 1998; July 1, 1996; July 1, 1993; May 1, 1990.

21 NCAC 58A .0114 is amended as published in volume 24, issue 14, page 1162 of the North Carolina Register with changes as follows:

21 NCAC 58A .0114 RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

(a) Every owner of real property subject to a transfer of the type contemplated by Chapter 47E of the General Statutes, Statutes shall complete the following residential property disclosure statement and furnish a copy of the complete statement to a purchaser in accordance with the requirements of G.S. 47E-4. The form shall bear the seal of the North Carolina Real Estate Commission and shall read as follows:

[N.C. REAL ESTATE COMMISSION SEAL]

STATE OF NORTH CAROLINA

RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

AND OWNER'S ASSOCIATION AND MANDATORY COVENANTS DISCLOSURE STATEMENT

Instructions to Property Owners

1. G.S. 47E requires owners of residential real estate (single-family ~~homes~~ homes, individual condominiums, townhouses, and the like, and buildings with up to four dwelling units) to furnish purchasers a property disclosure statement and Owner's Association and Mandatory Covenants Disclosure Statement ("Statement"). This form is the only one approved for this purpose. A disclosure statement must be furnished in connection with the sale, exchange, option and sale under a lease with option to purchase (unless the tenant is already occupying or intends to occupy the dwelling). A disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited and transactions of residential property made pursuant to a lease with option to purchase where the lessee occupies or intends to occupy the dwelling. For a complete list of exemptions, see G.S. 47E-2.
2. You must check ☒ one of the boxes for each of the questions on the reverse side of this form.
 - a. If you check "Yes" for any question, you must explain your answer and either describe any problem or attach a report from an engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.
 - b. If you check "No", you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misstatement.

- c. If you check "No Representation", you have no duty to disclose the conditions or characteristics of the property, even if you should have known of them.
- * If you check "Yes" or "No" and something happens to the property to make your Statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the purchaser a corrected Statement or correct the problem.
3. If you are assisted in the sale of your property by a licensed real estate broker, you are still responsible for completing and delivering the Statement to the purchasers; and the broker must disclose any material facts about your property which they know or reasonably should know, regardless of your responses on the Statement.
4. You must give the completed Statement to the purchaser no later than the time the purchaser makes an offer to purchase your property. If you do not, the purchaser can, under certain conditions, cancel any resulting contract (See "**Note to Purchasers**" below). You should give the purchaser a copy of the Statement containing your signature and keep a copy signed by the purchaser for your records.

Note to Purchasers

If the owner does not give you a Residential Property Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract and be entitled to a refund of any deposit monies you may have paid. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of the Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after settlement of the transaction or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

5. In the space below, type or print in ink the address of the property (sufficient to identify it) and your name. Then sign and date.

Property Address: _____
 Owner's Name(s): _____
Owner(s) acknowledge having examined this Statement before signing and that all information is true and correct as of the date signed.
 Owner Signature: _____ Date _____, _____

Owner Signature: _____ Date _____, ____

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that they have examined it before signing; that they understand that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections they may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain their own inspection from a licensed home inspector or other professional.

Purchaser Signature: _____ Date _____, ____

Purchaser Signature: _____ Date _____, ____

Property Address/Description: _____

[Note: In this form, "property" refers only to dwelling unit(s) and not sheds, detached garages or other buildings.]

Regarding the property identified above, do you know of any problem (malfunction or defect) with any of the following:

No Repr-
Yes* No sentation

1. FOUNDATION, SLAB, FIREPLACES/CHIMNEYS, FLOORS, WINDOWS (INCLUDING STORM WINDOWS AND SCREENS), DOORS, CEILINGS, INTERIOR AND EXTERIOR WALLS, ATTACHED GARAGE, PATIO, DECK OR OTHER STRUCTURAL COMPONENTS including any modifications to them?

☐ ☐ ☐

- a. Siding is: ☐ Masonry ☐ Wood ☐ Composition/Hardboard ☐ Vinyl ☐ Synthetic Stucco

☐ Other _____ ☐

- b. Approximate age of structure? _____ ☐

2. ROOF (leakage or other problem)? ☐ ☐ ☐

- a. Approximate age of roof covering? _____ ☐

3. WATER SEEPAGE, LEAKAGE, DAMPNESS OR STANDING WATER in the basement, crawl space or slab? ☐ ☐ ☐

4. ELECTRICAL SYSTEM (outlets, wiring, panel, switches, fixtures etc.)? ☐ ☐ ☐

5. PLUMBING SYSTEM (pipes, fixtures, water heater, etc.)? ☐ ☐ ☐
6. HEATING AND/OR AIR CONDITIONING? ☐ ☐ ☐
- a. Heat Source is: ☐ Furnace ☐ Heat Pump ☐ Baseboard ☐ Other _____ ☐
- b. Cooling Source is: ☐ Central Forced Air ☐ Wall/Window Unit(s)
☐ Other _____ ☐
- c. Fuel Source is: ☐ Electricity ☐ Natural Gas ☐ Propane ☐ Oil ☐ Other _____ ☐
7. WATER SUPPLY (including water quality, quantity and water pressure)? ☐ ☐ ☐
- a. Water supply is: ☐ City/County ☐ Community System ☐ Private Well
☐ Other _____ ☐
- b. Water pipes are: ☐ Copper ☐ Galvanized ☐ Plastic ☐ Other _____
☐ Unknown ☐
8. SEWER AND/OR SEPTIC SYSTEM? ☐ ☐ ☐
- a. Sewage disposal system is: ☐ Septic Tank ☐ Septic Tank with Pump
☐ Community System ☐ Connected to City/County System
☐ City/County System available ☐ Straight pipe (wastewater does not go into a septic or
other sewer system [note: use of this type of system violates state law]) ☐
☐ Other _____
9. BUILT-IN APPLIANCES (RANGE/OVEN, ATTACHED MICROWAVE, HOOD/FAN,
DISHWASHER, DISPOSAL, etc.)? ☐ ☐ ☐
10. PRESENT INFESTATION, OR DAMAGE FROM PAST INFESTATION OF WOOD
DESTROYING INSECTS OR ORGANISMS which has not been repaired? ☐ ☐ ☐
11. DRAINAGE, GRADING OR SOIL STABILITY OF LOT? ☐ ☐ ☐

12. OTHER SYSTEMS AND FIXTURES: CENTRAL VACUUM, POOL, HOT TUB, SPA, ATTIC FAN, EXHAUST FAN, CEILING FAN, SUMP PUMP, IRRIGATION SYSTEM, TV CABLE WIRING OR SATELLITE DISH, OR OTHER SYSTEMS? ☐ ☐ ☐

Also regarding the property identified above, including the lot, other improvements, and fixtures located thereon, do you have any

13. ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES ? ☐ ☐ ☐

14. ENVIRONMENTAL HAZARDS (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination)? ☐ ☐ ☐

15. COMMERCIAL, INDUSTRIAL, OR MILITARY NOISE, ODOR, SMOKE, ETC. AFFECTING THE PROPERTY? ☐ ☐ ☐

16. VIOLATIONS OF ZONING ORDINANCES, RESTRICTIVE COVENANTS OR OTHER LAND-USE RESTRICTIONS, OR BUILDING CODES INCLUDING THE FAILURE TO OBTAIN PROPER PERMITS FOR ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES(S)? ☐ ☐ ☐

17. UTILITY OR OTHER EASEMENTS, SHARED DRIVEWAYS, PARTY WALLS OR ENCROACHMENTS FROM OR ON ADJACENT PROPERTY? ☐ ☐ ☐

18. LAWSUITS, FORECLOSURES, BANKRUPTCY, TENANCIES, JUDGMENTS, TAX LIENS, PROPOSED ASSESSMENTS, MECHANICS' LIENS, MATERIALMENS' LIENS, OR NOTICE FROM ANY GOVERNMENTAL AGENCY that could affect title to the property? ☐ ☐ ☐

~~19. OWNERS' ASSOCIATION OR "COMMON AREA" EXPENSES OR ASSESSMENTS?~~ ~~☐~~ ~~☐~~ ~~☐~~

~~20.~~19. FLOOD HAZARD or that the property is in a FEDERALLY-DESIGNATED FLOOD PLAIN? ☐ ☐ ☐

~~21.~~20. PRIVATE ROAD(S) OR STREETS adjoining the property? ☐ ☐ ☐

a. If yes, do you know of an existing owner's association or maintenance agreement to

maintain the road or street?

☐ ☐ ☐

* If you answered "Yes" to any of the above questions, please explain (Attach additional sheets, if necessary):

In lieu of providing a written explanation, you may attach a written report to this Disclosure Statement by a public agency, engineer, land surveyor, geologist, pest control operator, contractor, home inspector or other expert, dealing with matters within the scope of that public agency's functions or the expert's license or expertise.

No Repre-

Yes* **No** **sensation**

21. Also regarding the property identified above, is the lot to be conveyed subject to regulation by one or more owners' association(s) and governing documents which impose various mandatory covenants, conditions, and restrictions upon the lot, including, but not limited to obligations to pay regular assessments or dues and special assessments?

☐ ☐ ☐

***If you answered "No" or "No Representations" to question 21 above, you do not need to answer the remaining questions on this Statement. Skip to the bottom of this page and initial and date the page. If you answered "Yes" to question 21 above, you must complete the remainder of this Statement.**

22. The lot is subject to the following owners' association(s) [insert N/A into any blank that does not apply]:

(specify name) _____ whose regular assessments ("dues") are \$ _____ per _____. The name, address, and telephone number of the president of the owners' association or the association manager are: _____

(specify name) _____ whose regular assessments ("dues") are \$ _____ per _____. The name, address, and telephone number of the president of the owners' association or the association manager are: _____

23. As of the date this Statement is signed, there are no other dues, fees, or special assessments which have been duly approved as required by the applicable declaration or bylaws, payable to an association to which the lot is subject, except: _____

24. As of the date this Statement is signed, there are no unsatisfied judgments against or pending lawsuits involving the lot, the planned community or the association to which the lot is subject, with the exception of any action filed by the association for the collection of delinquent assessments on lots other than the lot to be sold, except: _____

25. The following services and amenities are paid for by the above owners' association(s) from the regular assessments ("dues"): (Check all that apply).

	<u>Yes*</u>	<u>No</u>	<u>No Repre-</u> <u>sensation</u>
Master Insurance Policy Including All Units	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Real Property Taxes on the Common Areas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Management Fees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exterior Building Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exterior Yard/Landscaping Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Common Areas Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trash Removal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recreational Amenity Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pest Treatment/Extermination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Street Lights	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Casualty/Liability Insurance on Common Areas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sewer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stormwater Management/Drainage/Ponds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Internet Service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Private Road Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parking Area Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Legal/Accounting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gate and/or Security	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other (specify)			

(b) The form described in Paragraph (a) of this Rule may be reproduced, but the form shall not be altered or amended in any way.

History Note: *Authority G.S. 47E-4(b), (b1); 93A-3(c); 93A-6;*
 Eff. October 1, 1998;
 Amended Eff. July 1, 2010; July 1, 2009; January 1, 2008; July 1, 2006; September 1, 2002;
 July 1, 2000.

21 NCAC 58A .0402 is proposed to be amended as follows:

21 NCAC 58A .0402 EXAMINATION SUBJECT MATTER, FORMAT, AND PASSING SCORES

(a) The real estate licensing examination shall test applicants on the following general subject areas:

- (1) real estate law;
- (2) real estate brokerage law and practices;
- (3) the Real Estate License Law, rules of the Commission, and the Commission's trust account guidelines;
- (4) real estate finance;
- (5) real estate valuation (appraisal);
- (6) real estate mathematics; and
- (7) related subject areas.

(b) The real estate licensing examination shall consist of two sections, a "national" section on general real estate law, principles and practices and a "state" section on North Carolina real estate law, principles and practices. Unless the "national" section is waived by the Commission for an applicant based on its authority under N.C.G.S. 93A-9, an applicant must pass both sections of the examination in order to pass the examination. In order to pass the real estate licensing examination, an applicant must attain a score for each required section of the examination that is at least equal to the passing score established by the Commission for each section of the examination in compliance with psychometric standards for establishing passing scores for occupational licensing examinations as set forth in the "Standards for Educational and Psychological Testing" jointly promulgated by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education. ~~Passing applicants will receive only a score of "pass"; however, failing applicants shall be informed of their actual score.~~ An applicant who passes one or both sections of the examination will receive only a score of "pass" for the section(s) passed; however, an applicant who fails one or both sections of the examination shall be informed of their actual score for the section(s) failed. An applicant who is required to pass both sections of the examination must do so within his or her 180-day examination eligibility period, and if the applicant passes only one section during his or her 180-day examination eligibility period, then that passing score shall not be recognized if the applicant subsequently re-applies to the Commission for a license. A passing examination score obtained by a license applicant for both sections of the examination, or for the "state" section if that is the only section an applicant is required to pass, shall be recognized as valid for a period of one year from the date ~~of examination, the examination was passed,~~ during which time the applicant must fully satisfy any remaining requirements for licensure that were pending at the time of examination; provided that the running of the one-year period shall be tolled upon mailing the applicant the letter contemplated in 21 NCAC 58A .0616(b) informing the applicant that his or her moral character is in question, and shall resume running when the applicant's application is either approved for license issuance, denied or withdrawn. The application of an applicant with a passing examination score who fails to satisfy all remaining requirements for licensure within one year shall be canceled and the applicant shall be

1 required to reapply and satisfy all requirements for licensure, including retaking and passing the license
2 examination, in order to be eligible for licensure.

3
4 *History Note:* Authority G.S. 93A-3(c); 93A-4(b),(d);
5 Eff. February 1, 1976;
6 Readopted Eff. September 30, 1977;
7 Amended Eff. January 1, 2012; April 1, 2006; July 1, 2000; July 1, 1996; July 1, 1989; December 1,
8 1985; May 1, 1982; April 11, 1980.

1 **21 NCAC 58A .0403 is proposed to be amended as follows:**

2
3 **21 NCAC 58A .0403 RE-APPLYING FOR EXAMINATION**

4 (a) An individual whose license application has been canceled pursuant to Rule .0302(c) of this Subchapter and
5 whose 180 day examination eligibility period has expired who wishes to be rescheduled for the real estate license
6 examination must re-apply to the Commission by filing a complete license application as described in Rule .0301 of
7 this Subchapter and paying the prescribed application fee. Subsequent examinations shall then be scheduled in
8 accordance with Rule .0401 of this Section.

9 (b) An individual whose license application has been canceled pursuant to Rule .0302(c) of this Subchapter who
10 wishes to be rescheduled for the license examination before the expiration of his or her 180 day examination
11 eligibility period may utilize an abbreviated electronic license application and examination rescheduling procedure
12 by directly contacting the Commission's authorized testing service, paying both the license application fee and the
13 examination fee to the testing service, and following the testing service's established procedures.

14 (c) An applicant who fails one or both sections of the license examination shall not be allowed to retake the failed
15 section(s) of the examination for at least 10 calendar days.

16
17 *History Note: Authority G.S. 93A-4(b),(d);*

18 *Eff. February 1, 1976;*

19 *Readopted Eff. September 30, 1977;*

20 *Amended Eff. January 1, 2012; February 1, 1988; December 1, 1985; April 11, 1980;*

21 *Temporary Amendment Eff. April 24, 1995 for a period of 180 days or until the permanent rule*
22 *becomes effective, whichever is sooner;*

23 *Amended Eff. April 1, 2004; October 1, 2000; August 1, 1995.*

1 **21 NCAC 58A .0405 is proposed to be amended as follows:**

2
3 **21 NCAC 58A .0405 CONFIDENTIALITY OF EXAMINATIONS**

4 Licensing examinations are ~~the exclusive property of the Commission and are~~ confidential. No applicant or licensee
5 shall obtain, attempt to obtain, receive, or communicate to other persons examination questions or answers.

6 Violation of this Rule is grounds for denial of a real estate license if the violator is an applicant and disciplinary
7 action if the violator is a licensee or becomes a licensee prior to the discovery of the violation by the Commission.

8 *History Note:* *Authority G.S. 93A-3(c); 93A-4(d); 93A-6;*

9 *Eff. December 1, 1985;*

10 *Amended Eff. January 1, 2012; July 1, 2009.*

1 **21 NCAC 58A.0504 is proposed to be amended as follows:**

2
3 **21 NCAC 58A .0504 ACTIVE AND INACTIVE LICENSE STATUS**

4 (a) Except for licenses that have expired or that have been ~~canceled~~, revoked, suspended or surrendered, all licenses
5 issued by the Commission shall be designated as being either on active status or inactive status. The holder of a
6 license on active status may engage in any activity requiring a real estate license and may be compensated for the
7 provision of any lawful real estate brokerage service. The holder of a license on inactive status may not engage in
8 any activity requiring a real estate license, including the referral for compensation of a prospective seller, buyer,
9 landlord or tenant to another real estate licensee or any other party. A licensee holding a license on inactive status
10 must renew such license and pay the prescribed license renewal fee in order to continue to hold such license. The
11 Commission may take disciplinary action against a licensee holding a license on inactive status for any violation of
12 G.S. 93A or any rule promulgated by the Commission, including the offense of engaging in an activity for which a
13 license is required while a license is on inactive status.

14 (b) A license issued to a provisional broker shall, upon initial licensure, be assigned to inactive status, ~~except that a~~
15 ~~license issued to a provisional broker based on reciprocity with another licensing jurisdiction shall be assigned to~~
16 ~~active status.~~ status. A license issued to a firm or a broker other than a provisional broker shall be assigned to active
17 status. Except for persons licensed under the provisions of Section .1800 of this Subchapter, a broker may change
18 the status of his or her license from active to inactive status by submitting a written request to the Commission. A
19 provisional broker's license shall be assigned by the Commission to inactive status when the provisional broker is
20 not under the active, direct supervision of a broker-in-charge. A firm's license shall be assigned by the Commission
21 to inactive status when the firm does not have a qualifying broker with an active license. Except for persons licensed
22 under the provisions of Section .1800 of this Subchapter, a broker shall also be assigned to inactive status if, upon
23 the second renewal of his or her license following initial licensure, or upon any subsequent renewal, he or she has
24 not satisfied the continuing education requirement described in Rule .1702 of this Subchapter.

25 (c) A provisional broker with an inactive license who desires to have such license placed on active status must
26 comply with the procedures prescribed in Rule .0506 of this Section.

27 (d) A broker, other than a provisional broker, with an inactive license who desires to have such license placed on
28 active status shall file with the Commission a request for license activation on a form provided by the Commission
29 containing identifying information about the broker, a statement that the broker has satisfied the continuing
30 education requirements prescribed by Rule .1703 of this Subchapter, the date of the request, and the signature of the
31 broker. Upon the mailing or delivery of this form, the broker may engage in real estate brokerage activities
32 requiring a license; however, if the broker does not receive from the Commission a written acknowledgment of the
33 license activation within 30 days of the date shown on the form, the broker shall immediately terminate his or her
34 real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the broker
35 is notified that he or she is not eligible for license activation due to a continuing education deficiency, the broker
36 must terminate all real estate brokerage activities until such time as the continuing education deficiency is satisfied
37 and a new request for license activation is submitted to the Commission.

(e) A firm with an inactive license which desires to have its license placed on active status shall file with the Commission a request for license activation on a form provided by the Commission containing identifying information about the firm and its qualifying broker. If the qualifying broker has an inactive license, he or she must satisfy the requirements of Paragraph (d) of this Rule. Upon the mailing or delivery of the completed form by the qualifying broker, the firm may engage in real estate brokerage activities requiring a license; however, if the firm's qualifying broker does not receive from the Commission a written acknowledgment of the license activation within 30 days of the date shown on the form, the firm shall immediately terminate its real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the qualifying broker is notified that the firm is not eligible for license activation due to a continuing education deficiency on the part of the qualifying broker, the firm must terminate all real estate brokerage activities until such time as the continuing education deficiency is satisfied and a new request for license activation is submitted to the Commission.

(f) A person licensed as a broker under Section .1800 of this Subchapter shall maintain his or her license on active status at all times as required by Rule .1804 of this Subchapter.

History Note: Authority G.S. 93A-3(c); 93A-4(d); 93A-4.1; 93A-6; 93A-9;

Eff. February 1, 1976;

Readopted Eff. September 30, 1977;

Amended Eff. January 1, 2012; April 1, 2006; July 1, 2005; July 1, 2004; October 1, 2000; April 1, 1997; July 1, 1996; July 1, 1995; July 1, 1994; February 1, 1989; December 1, 1985.

1 **21 NCAC 58A.0505 is proposed to be amended as follows:**

2
3 **21 NCAC 58A .0505 REINSTATEMENT OF EXPIRED LICENSE, REVOKED, SURRENDERED OR**
4 **SUSPENDED LICENSE**

5 (a) Licenses expired for not more than six months may be reinstated upon the submission of payment of a fifty-five
6 dollar (\$55.00) reinstatement fee. In order to reinstate the license on active status, the person requesting
7 reinstatement shall have obtained the continuing education as is required by Rule .1703 of this Subchapter to change
8 an inactive license to active status. A person reinstating a license on inactive status is not required to have obtained
9 any continuing education in order to reinstate the license; however, in order to subsequently change his or her
10 reinstated license from inactive status to active status, the licensee must satisfy the continuing education requirement
11 prescribed in Rule .1703 of this Subchapter, and be supervised by a broker-in-charge in compliance with the
12 requirements of Rule .0506 of this Section.

13 (b) Reinstatement of licenses expired for more than six months ~~or provisional broker licenses cancelled pursuant to~~
14 ~~G.S. 93A-4(a)~~ shall be considered upon the submission of a complete and accurate application and payment of a
15 fifty-five dollar (\$55.00) reinstatement fee. Applicants must satisfy the Commission that they possess the current
16 knowledge, skills and competence, as well as the truthfulness, honesty and integrity, necessary to function in the real
17 estate business in a manner that protects and serves the public interest. To demonstrate knowledge, skills and
18 competence, the Commission may require the applicants to complete real estate education or pass the license
19 examination or both.

20 (c) Reinstatement of a revoked license shall be considered upon the submission of a complete and accurate
21 application and payment of a thirty dollar (\$30.00) fee. Applicants must satisfy the same requirements as those
22 prescribed in Paragraph (b) of this Rule for reinstatement of licenses expired for more than six months.

23 (d) Reinstatement of a license surrendered under the provisions of G.S. 93A-6(e) shall be considered upon
24 termination of the period of surrender specified in the order approving the surrender and upon the submission of a
25 complete and accurate application and payment of a thirty dollar (\$30.00) fee. Applicants must satisfy the same
26 requirements as those prescribed in Paragraph (b) of this Rule for reinstatement of licenses expired for more than six
27 months.

28 (e) When a license is suspended by the Commission, the suspended license shall be restored at the end of the period
29 of active suspension provided that any applicable license renewal fees that accrued during the time of the suspension
30 are paid by the licensee within 60 days from the end of the period of license suspension. In order for the license to
31 be restored on active status, the licensee shall demonstrate that the licensee has satisfied the continuing education
32 requirement for license activation prescribed by Rule .1703 of this Subchapter and that the licensee is supervised by
33 a broker-in-charge in compliance with the requirements of Rule .0506 of this Section, if applicable. Failure to pay
34 the accrued license renewal fees within the time set forth in this Paragraph shall result in expiration of the license
35 effective the last day of the suspension period. A former licensee whose license expires under this Paragraph and
36 who thereafter seeks reinstatement must satisfy the same requirements as those prescribed in Paragraph (b) of this
37 Rule for reinstatement of licenses expired for more than six months.

(f) Whenever a license is reinstated by the Commission following expiration for more than six months, ~~cancellation~~, revocation, or voluntary surrender, the date of licensure for the licensee shall be the date of reinstatement and not the date of original licensure.

History Note: Authority G.S. 93A-3(c); 93A-4(c),(d); 93A-4.1;
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Temporary Amendment Eff. April 24, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. January 1, 2012; January 1, 2008; April 1, 2004; July 1, 2000; August 1, 1998; July 1, 1996; August 1, 1995; July 1, 1995.

1 **21 NCAC 58A .0616 is proposed to be amended as follows:**

2
3 **21 NCAC 58A .0616 PROCEDURES FOR REQUESTING HEARINGS WHEN APPLICANT'S**
4 **CHARACTER IS IN QUESTION**

5 (a) When the moral character of an applicant for licensure or approval is in question, the applicant shall not be
6 licensed or approved until the applicant has affirmatively demonstrated that the applicant possesses the requisite
7 truthfulness, honesty, and integrity. For the purposes of this Rule, applicant means any person or entity making
8 application for licensure as a real estate broker or for licensure or approval as a prelicensing or continuing education
9 instructor, director, coordinator, school or sponsor. When the applicant is an entity, it shall be directed and
10 controlled by persons who are truthful and honest and who possess integrity.

11 (b) When the character of an applicant is in question, the Commission shall defer action upon the application until
12 the applicant is notified by letter. The letter informing the applicant that his or her moral character is in question
13 shall be sent by certified mail, return receipt requested, to the address shown upon the application. The applicant
14 shall have 60 days from the date of receipt of this letter to request a hearing before the Commission. If the applicant
15 fails to request a hearing within this time or if a properly addressed letter is returned to the Commission undelivered,
16 applicant's right to a hearing shall be considered waived and the application shall be deemed denied. If the applicant
17 makes a timely request for a hearing in accordance with the provisions of this Rule, the Commission shall provide
18 the applicant with a Notice of Hearing and hearing as required by ~~G.S. 150B, Article 3~~; G.S. 150B, Article 3A.

19 (c) Nothing in this Rule shall be interpreted to prevent an unsuccessful applicant from reapplying for licensure or
20 approval if such application is otherwise permitted by law.

21 *History Note: Authority G.S. 93A-4;*

22 *Eff. September 1, 2002;*

23 *Amended Eff. January 1, 2012; April 1, 2006.*

21 NCAC 58A .1902 is proposed to be amended as follows:

21 NCAC 58A .1902 POSTLICENSING EDUCATION REQUIREMENT

(a) The 90 classroom hour postlicensing education program shall consist of three 30 classroom hour courses prescribed by the Commission which may be taken in any sequence. A provisional broker as described in G.S. 93A-4(a1) or G.S. 93A-4.3(d) must satisfactorily complete at least one of the 30-hour courses during each of the first three years following the date of his or her initial licensure as a broker in order to retain his or her eligibility to actively engage in real estate brokerage. Upon completion of all three courses by a provisional broker, the provisional status of the broker's license shall be terminated by the Commission. The three courses shall be devoted to:

- (1) real estate brokerage relationships and responsibilities;
- (2) real estate contracts and transactions; and
- (3) specialized topics, including commercial real estate, rental management, real estate finance, real estate appraisal, real estate development, and real estate regulation.

(b) If a provisional broker as describe in G.S. 93A-4(a1) or G.S. 93A-4.3(d) fails to complete the required postlicensing education described in paragraph (a) of this Rule by the end of either the first or second year following the date of his or her initial licensure as a broker, his or her license shall be placed on inactive status. Between the end of the first year after initial licensure and the end of the third year after initial licensure, a provisional broker who is subject of the postlicensing education requirement and who desires to activate a license that is on inactive status shall make up any postlicensing education deficiency as well as satisfy the continuing education requirements for license activation described in Rule .1703 of this Subchapter, satisfy the requirement for supervision by a broker-in-charge described in Rule .0506 of this Subchapter and file with the Commission a request for license activation as described in Rule .0504 of this Subchapter.

(c) If a provisional broker as described in G.S. 93A-4(a1) or G.S. 93A-4.3(d) fails to complete all three postlicensing courses within three years following the date of his or her initial licensure, his or her license shall be ~~canceled and, in order to reinstate such license, the former broker must satisfy the requirements described in G.S. 93A-04(a1) and Rule .0505 of this Subchapter.~~ placed on inactive status. In order to activate the license, the provisional broker shall demonstrate completion of all three postlicensing courses within the previous three years, which will terminate the provisional status of the broker's license, and shall satisfy the continuing education requirements for license activation described in Rule .1703 of this Subchapter.

History Note: Authority G.S. 93A-4; 93A-4(a1);

Eff. April 1, 2006.

Amended Eff. January 1, 2012.

1 **21 NCAC 58A .1903 is proposed to be amended as follows:**

2
3 **21 NCAC 58A .1903 EXTENSIONS OF TIME TO COMPLETE POSTLICENSING EDUCATION**

4 A provisional broker as described in G.S. 93A-4(a1) or G.S. 93A-4.3(d) may request and be granted an extension of
5 time to satisfy the postlicensing education requirement for ~~the first and second years~~ any of the first three years
6 following the date of his or her initial licensure as a broker if the licensee provides evidence satisfactory to the
7 Commission that he or she was unable to obtain the necessary education due to an incapacitating illness or other
8 circumstance which existed for a substantial portion of the year in question and which constituted a severe and
9 verifiable hardship such that to comply with the education requirement would have been impossible or unreasonably
10 burdensome. ~~The Commission shall in no case grant an extension of time to satisfy the postlicensing education~~
11 ~~requirement that extends beyond the end of the third year after initial licensure as a broker.~~ The Commission also
12 shall not grant an extension of time when the reason for the request is a business or personal conflict or when, in the
13 opinion of the Commission, the principal reason for the provisional broker's failure to obtain the required education
14 in a timely manner was unreasonable delay on the part of the provisional broker in obtaining such education. If an
15 extension of time is granted, the provisional broker may retain his or her license on active status until expiration of
16 the extension period, but the license shall be automatically changed to inactive status at the end of the extension
17 period unless the licensee obtains the required postlicensing education prior to that time. If an extension of time is
18 not granted, the provisional broker's license shall be treated as described in Rule .1902(b) or (c) of this Section. A
19 request for an extension of time must be submitted on a form prescribed by the Commission.

20
21 *History Note:* *Authority G.S. 93A-4;*
22 *Eff. April 1, 2006.*
23 *Amended Eff. January 1, 2012.*

1 **21 NCAC 58C .0207 is proposed to be amended as follows:**

3 **21 NCAC 58C .0207 FACILITIES AND EQUIPMENT**

4 (a) All school facilities and equipment shall be in compliance with all applicable local, state and federal laws and
5 regulations regarding health, safety and welfare, including the Americans with Disabilities Act and other laws
6 relating to accessibility standards for places of public accommodation. Schools shall furnish the Commission with
7 inspection reports from appropriate local building, health and fire inspectors upon request of the Commission.

8 (b) Classrooms shall be of sufficient size to accommodate comfortably all students enrolled in a course, shall have
9 adequate light, heat, cooling and ventilation and shall be free of distractions which would disrupt class sessions.

10 (c) Classrooms shall contain, ~~at a minimum, an overhead projector and~~ student desks or worktables sufficient to
11 accommodate all students enrolled in a course and shall have the capability for instructors to make electronic visual
12 presentations.

13 (d) Classroom facilities must be in a fixed building. No bus, van, tractor-trailer or other motor vehicle shall be
14 used as a classroom facility.

15
16 *History Note: Authority G.S. 93A-4(a),(d); 93A-33;*

17 *Eff. October 1, 1980;*

18 *Amended Eff. February 1, 1989; November 1, 1987; September 1, 1984;*

19 *Transferred and Recodified from 21 NCAC 58A .1307 Eff. November 27, 1989;*

20 *Amended Eff. January 1, 2012; July 1, 2005; July 1, 2001; July 1, 2000; July 1, 1993.*

1 **21 NCAC 58C .0603 is proposed to be amended as follows:**

2
3 **21 NCAC58C .0603 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL**

4 (a) An individual seeking original approval as a prelicensing and postlicensing course instructor shall make
5 application on a form provided by the Commission. An applicant who is not a resident of North Carolina shall also
6 file with the application a consent to service of process and pleadings. No application fee is required. All required
7 information regarding the applicant's qualifications shall be submitted.

8 (b) An instructor applicant shall demonstrate that he or she possesses good moral character as set out in G.S. 93A-
9 4(b) and the following qualifications or other qualifications found by the Commission to be equivalent to the
10 following qualifications: a current North Carolina real estate broker license that is not on provisional status; a
11 current continuing education record; three years active full-time experience in general real estate brokerage,
12 including substantial experience in real estate sales and at least one year of general brokerage experience in North
13 Carolina, within the previous seven years; and 60 semester hours of college-level education at an institution
14 accredited by the Southern Association of Colleges and Schools or any other college accrediting body recognized by
15 the U.S. Department of Education. For purposes of this Rule, substantial experience is experience which is material,
16 valuable, and worthwhile and not nominal, occasional, or intermittent. The Commission shall consider teaching
17 experience at the secondary or post-secondary level in lieu of a portion of the brokerage experience requirement.

18 (c) In addition to the qualification requirements stated in Paragraph (b) of this Rule, an applicant shall also
19 demonstrate completion of the Commission's new instructor seminar within three years prior to the date of
20 application and shall submit a one-hour video recording which depicts the applicant teaching a real estate
21 prelicensing or postlicensing course topic and which demonstrates that the applicant possesses the basic teaching
22 skills described in Rule .0604 of this Section. The new instructor seminar requirement shall be waived upon a
23 finding by the Commission that the applicant possesses comparable instructor training, three years full-time
24 experience teaching real estate pre-licensing courses in another state within the previous five years, or other
25 equivalent qualifications. The video recording shall comply with the requirements specified in Rule .0605(c) of this
26 Section. An applicant who is a Commission-approved continuing education update course instructor under
27 Subchapter E, Section .0200 of this Chapter or who holds the Distinguished Real Estate Instructor (DREI)
28 designation granted by the Real Estate Educators Association or an equivalent real estate instructor certification
29 shall be exempt from the requirement to demonstrate satisfactory teaching skills by submission of a digital video
30 disc (DVD) or videotape. An applicant who is qualified under Paragraph (b) of this Rule but who has not satisfied
31 these additional requirements at the time of application shall be approved and granted a six-month grace period to
32 complete these requirements. The approval of any instructor who is granted such six-month period to complete the
33 requirements shall automatically expire on the last day of the period if the instructor has failed to satisfy his or her
34 qualification deficiencies and the period has not been extended by the Commission. The Commission shall extend
35 the six-month period for up to three additional months when the Commission requires more than 30 days to review
36 and act on a submitted video recording, when the expiration date of the period occurs during a course being taught
37 by the instructor, or when the Commission determines that such extension is otherwise warranted by exceptional

1 circumstances which are outside the instructor's control or when failure to extend the grace period could result in
2 harm or inconvenience to students, licensees, or other innocent persons. An individual applying for instructor
3 approval who ~~within the previous three years~~ was previously allowed the six-month grace period to satisfy the
4 requirements stated in this Paragraph, but did not satisfy such requirements within the allowed grace period, shall
5 not be allowed the grace period.

6
7 *History Note:* Authority G.S. 93A-4; 93A-33; 93A-34;

8 *Eff. October 1, 2000;*

9 *Amended Eff. January 1, 2012; January 1, 2008; April 1, 2006; July 1, 2005; April 1, 2004;*

10 *September 1, 2002.*

1 **21 NCAC 58E .0204 is proposed to be amended as follows:**

2
3 **21 NCAC 58E .0204 RENEWAL OF APPROVAL**

4 (a) Commission approval of update course instructors expires on the third December 31 following issuance of
5 approval. In order to assure continuous approval, approved instructors must file applications for renewal of
6 approval on a form prescribed by the Commission on or before December 1 immediately preceding expiration of
7 their approval. Applicants must satisfy the criteria for original approval, with the exception of the requirement
8 stated in Rule .0203(d) of this Section, in order to renew their approval.

9 (b) In order to reinstate an expired instructor approval, the former instructor must file an application on a form
10 provided by the Commission and must satisfy the criteria for original approval set forth in Rule .0203(b) and (c) of
11 this Section. If the applicant's prior instructor approval has been expired for more than one year, the applicant must
12 also satisfy the criteria for original approval set forth in Rule .0203(d) of this Section.

13 *History Note: Authority G.S. 93A-3(c); 93A-4A;*

14 *Eff. July 1, 1994;*

15 *Amended Eff. January 1, 2012.*

21 NCAC 58E .0507 is proposed to be amended as follows:

21 NCAC 58E .0507 CLASSROOM FACILITIES

Courses must be conducted in a ~~facility~~ fixed building that provides an appropriate learning environment. No bus, van, tractor-trailer or other motor vehicle shall be used as a classroom facility. At a minimum, the classroom must:

- (1) be of sufficient size to accommodate comfortably all enrolled students;
- (2) be adequately equipped with student desks, worktables with chairs or other seating having a writing surface;
- (3) have adequate light, heat, cooling, ventilation, and public address equipment; ~~and~~
- (4) have the capability for instructors to make electronic presentations; and
- (5) be free of distractions that would disrupt class sessions.

History Note: Authority G.S. 93A-3(c); 93A-4A;

Eff. July 1, 1994.

Amended Eff. January 1, 2012.



NOTICE OF TEXT

[Authority G.S. 150B-21.2(c)]

OAH USE ONLY

VOLUME:

ISSUE:

CHECK APPROPRIATE BOX:

- ☒ Notice with a scheduled hearing
☐ Notice without a scheduled hearing
☐ Republication of text. Complete the following cite for the volume, issue, and date of previous publication, as well as blocks 1 - 3 and 6 - 12. If a hearing is scheduled, complete block 4.
Previous publication of text was published in Volume: Issue:

1. Rule-Making Agency:

North Carolina Real Estate Commission

2. Proposed Action -- Mark the appropriate box(es) and list rule citation(s) beside proposed action:

☒ **ADOPTION:** 21 NCAC 58A .0510

☐ **AMENDMENT:**

☐ **REPEAL:**

3. Proposed effective date: January 1, 2012

4. Is a public hearing planned? ☒ Yes ☐ No

If yes: Public Hearing date: October 12, 2011

Public Hearing time: 9:00 a.m.

Public Hearing Location: North Carolina Real Estate Commission, 1313 Navaho Drive, Raleigh, NC, 27609

5. If no public hearing is scheduled, provide instructions on how to demand a public hearing:

6. Explain Reason For Proposed Action:

To bring the rules into conformity with recent legislative changes to N.C. Gen. Stat. Ch. 93A, enacted in the last General Assembly session by S.L. 2011-217.

7. The procedure by which a person can object to the agency on a proposed rule:

Any person who objects or who has a comment about proposed rule changes may submit written comments to rule-making coordinator, Thomas R. Miller, at the address given below.

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

8. The person to whom written comments may be submitted on the proposed rule:

Name: Thomas R. Miller

Address: North Carolina Real Estate Commission
P.O. Box 17100
Raleigh, NC 27619

Phone (optional): 919-875-3700

Fax (optional): 919-877-4220

E-Mail (optional): legal@ncrec.gov

9. Comment Period Ends: October 12, 2011

10. Fiscal impact (mark all that apply).

If this form contains rules that have different fiscal impacts, list the rule citations beside the appropriate impact.

☐ **Certified by OSBM**

☐ **State funds affected**

☐ **Local funds affected**

☐ **Substantial economic impact (\geq \$3,000,000)**

☐ **Fiscal Note posted at <http://www.osbm.state.nc.us/> _____**

☒ **No fiscal note required pursuant to G.S. 150B-21.4**

11. Rule-making Coordinator:

Thomas R. Miller

Address:

North Carolina Real Estate Commission
PO Box 17100, Raleigh, NC, 27619

Phone: 919-875-3700

E-Mail: legal@ncrec.gov

Agency contact, if any:

Karissa B. sluss

Phone: 919-875-3700

E-mail: karissa@ncrec.gov

12. Signature of Agency Head* or Rule-making Coordinator:

***If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name: Thomas R. Miller

Title: Rule-making Coordinator



NOTICE OF TEXT FOR PROPOSED RULE CHANGES
EFFECTIVE JANUARY 1, 2012

SUMMARY OF PROPOSED ADOPTION

- 1) Adopt 21 NCAC 58A .0510 to provide for licensing of foreign brokers after licensing by reciprocity is discontinued effective February 29, 2012.

1 21 NCAC 58A .0510 is proposed to be adopted as follows:

2
3 **21 NCAC 58A. 0510 LICENSING OF PERSONS LICENSED IN ANOTHER JURISDICTION**

4 (a) The Commission may fully exempt from its license examination requirement and issue broker licenses
5 by reciprocity to applicants who have otherwise satisfied the requirements of G.S. 93A-4 and who are residents of
6 and hold active licensees in the following jurisdictions: Arkansas, Connecticut, Georgia, Iowa, Louisiana,
7 Mississippi, Nebraska, South Carolina, Tennessee and West Virginia. The Commission shall discontinue broker
8 licensing by reciprocity effective February 29, 2012. On and after March 1, 2012, licensees who were licensed in
9 North Carolina by reciprocity shall be entitled to retain such license indefinitely, unless suspended, revoked or
10 surrendered pursuant to G.S. 93A-6, so long as the license is continuously renewed or is reinstated within six months
11 of expiration. A person who was previously licensed in North Carolina by reciprocity and who seeks reinstatement
12 of that license after the license has been expired for more than six months, suspended, revoked or surrendered shall
13 be required to satisfy the requirements described in Rule .0505 of this subsection.

14 (b) Effective March 1, 2012, persons applying for a North Carolina broker license who hold a current real
15 estate license that has been on active status within the previous three years in another state of the United States, a
16 United States territory or possession or a Canadian jurisdiction shall be required to meet the licensing requirements
17 prescribed in G.S. 93A-4 except that such persons shall be exempt from the "national" section of the North Carolina
18 real estate license examination, but shall be required to pass the "state" section of that examination.

19 History Note: Authority G.S. 93A-3(c); 93A-4(b),(c),(d); 93A-4.1; 93A-9(a).

20 Eff. January 1, 2012.



NOTICE OF TEXT

[Authority G.S. 150B-21.2(c)]

OAH USE ONLY

VOLUME:

ISSUE:

CHECK APPROPRIATE BOX:

- ☒ Notice **with** a scheduled hearing
☐ Notice without a scheduled hearing
☐ Republication of text. Complete the following cite for the volume, issue, and date of previous publication, as well as blocks 1 - 3 and 6 - 12. If a hearing is scheduled, complete block 4.
Previous publication of text was published in Volume: Issue:

1. Rule-Making Agency: North Carolina Real Estate Commission

2. Proposed Action -- Mark the appropriate box(es) and list rule citation(s) beside proposed action:

☐ ADOPTION:

☐ AMENDMENT:

☒ REPEAL: 21 NCAC 58A .0406

3. Proposed effective date: January 1, 2012

4. Is a public hearing planned? ☒ Yes ☐ No

If yes: Public Hearing date: Feb 11, 2009

Public Hearing time: 9:00

Public Hearing Location: The North Carolina Real Estate Commission 1313 Navaho Drive Raleigh, NC 27609

5. If no public hearing is scheduled, provide instructions on how to demand a public hearing: N/A

6. Explain Reason For Proposed Action: To clarify the rules in light of suggestions from the public, licensees, and the Commission's staff.

7. The procedure by which a person can object to the agency on a proposed rule: Any person who objects or who has comment about the proposed rule changes may submit written comments to rule-making coordinator Thomas R. Miller at the address listed below.

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

8. The person to whom written comments may be submitted on the proposed rule:

Name: Thomas R. Miller

Address: 1313 Navaho Drive, Raleigh, NC 27609

Phone (optional): 919-875-3700

Fax (optional): 919-877-4220

E-Mail (optional): legal@ncrec.gov

9. Comment Period Ends: October 12, 2011

10. Fiscal impact (mark all that apply):

- ☐ **Certified by OSBM**
- ☐ **State funds affected**
 - ☐ **Local funds affected**
 - ☐ **Substantial economic impact (\geq \$3,000,000)**

☒ **No fiscal note required pursuant to G.S. 150B-21.4**

***If this form contains rules that have different fiscal impacts, list the rule cites beside the appropriate impact.**

11. Rule-making Coordinator: Thomas R. Miller

Address: 1313 Navaho Drive, Raleigh, NC 27619

Phone: 919-875-3700

E-Mail: legal@ncrec.gov

Agency contact, if any: Karissa B. Sluss

Phone: 919-875-3700

E-mail: legal@ncrec.gov

12. Signature of Agency* Head or Rule-making Coordinator:

***If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name: Thomas R. Miller

Title: Rule-making Coordinator

NOTICE OF TEXT FOR PROPOSED RULE CHANGES
EFFECTIVE JANUARY 1, 2012

SUMMARY OF REPEAL

- 1) Repeal 21 NCAC 58A .0406 regarding review of the license examination by failing applicants because, under the controlling provisions of Chapter 93B of the General Statutes, review is not applicable to examinations prepared and owned by private testing firms.

1 **21 NCAC 58A .0406 is proposed to be repealed as follows:**

2

3 **21 NCAC 58A .0406 EXAMINATION REVIEW**

4

5 *History Note: Authority G.S. 93A-4(d);*

6 *Eff. December 1, 1985;*

7 *Amended Eff. April 1, 2006; October 1, 2000; July 1, 1989; February 1, 1989.*

8 *Repealed Eff. January 1, 2011*